Building on Success

Interim Report - May 30, 2002

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Executive Summary

The Commission on First Nations and Métis Peoples and Justice Reform is six months into its mandate of examining the justice system in the province of Saskatchewan. Justice Minister Chris Axworthy announced the formation of the Justice Reform Commission on November 15, 2001.

Although it is still early, the Commissioners have been able to make several observations as they begin the challenge of identifying concerns and, most important, developing recommendations for positive change within the system. It has been recognized that many First Nations and Métis people in this province have lost confidence in the justice system. That rather grim assessment is already known; now the Commission must identify *specific* areas of concern and seek remedies to correct these problems.

The Justice Reform Commission has stated that it will be different in its approach and its commitment to compel change, whether it comes about through legislation or education. Formal hearings are being replaced by vehicles such as community dialogues in towns and villages and on reserves throughout Saskatchewan. In this report, a strategy for these dialogues is outlined. The intent is for this Commission to be open to dialogue with as many individuals, organizations and communities as possible. The dialogues will be conducted in an environment that is open, but at the same time secure for everyone involved in the process. Every effort is being made to accommodate as many people as possible in this dialogue with Saskatchewan.

This interim report takes note of some of the work that has been performed by previous commissions, boards of inquiry and others who have studied the justice system in this country. Their studies provide guidance for the Justice Reform Commission, but they also serve as a stark reminder that the task is both massive and fraught with obstacles which must be addressed by this body. Research, it would seem, can be accomplished if sufficient time and resources are available. Bringing about reform is another matter and will require a high degree of innovative thought and determination on the part of this Commission.

In the wake of the previous studies that have been commissioned in the last two or three decades, the *Commission on First Nations and Métis Peoples and Justice Reform* acknowledges that it arrives on the scene with a degree of cynicism surrounding it and its chances of succeeding. This report identifies some of the successes that have occurred as a result of past commissions. This Commission and the Saskatchewan public are in agreement that the reforms that have come about have not been as effective as most people would have wished.

Executive Summary (continued)

The critical statistics, the numbers that indicate high incarceration rates among Aboriginal people, for example, show little sign of improvement, despite some significant changes in how justice is delivered in this province. The *Linn Reports*, in particular, have been heralded as a catalyst for change in Saskatchewan over the last decade. Later in this report, a brief analysis of the *Linn Reports* reveals that 32 recommendations from those 1992 documents have been implemented and another 57 are ongoing or are in the process of being phased into the justice system. And while this appears to be a step in the right direction, this Commission is concerned that these reforms have not had the desired effect of restoring confidence in the justice system among First Nations and Métis people in Saskatchewan. This speaks to the enormity of the task facing the Justice Reform Commission and serves as a reminder of how vital an innovative approach to the issues will be over the next two years.

Elsewhere in this report, it is pointed out that justice issues, particularly as they relate to Aboriginal people, cannot be examined in isolation. One must take into consideration the high rate of growth compared to the non-Aboriginal population. Clearly, factors such as health, economics and education play a role in leading people into contact with the justice system. This Commission, consequently, will be required to view justice issues from a holistic perspective.

Although this process does evoke cynicism at times, it has been noted by the Commission that there is a high degree of enthusiasm and a sense of comfort among many people in Saskatchewan as this body begins its work. Meetings with the stakeholders group in March and the first dialogues in Regina and Saskatoon demonstrated the importance of this undertaking. Already, numerous communities have invited the Justice Reform Commission to visit their community. They are anxious to provide their input into the process and to assist with what they believe is an essential restructuring of the justice system, attitudes and practices. The *Commission on First Nations and Métis Peoples and Justice Reform* is committed to hearing what the people of Saskatchewan have to say as this process continues.

Vision

One Community - working together to create a healthy, just, prosperous and safe Saskatchewan

Meyo Wahkotowin

Mission Statement

To create change and make a difference by:

- Listening to people
- Building relationships
- Promoting respect and change
- Recognizing successes, and
- Making recommendations for future justice reform

Message from the Chair: Mr. Wilton Littlechild

On behalf of my fellow Commissioners, I would like to thank all the people of Saskatchewan for the trust and honour to work on this challenging opportunity. While there have been several reviews of the justice systems across Canada, this is uniquely important for its focus, its vision and mission.

The Federation of Saskatchewan Indian Nations and the Métis Nation of Saskatchewan, working with Saskatchewan Justice, have been vital to the development of our mandate as outlined in our terms of reference. Their sincere concern and desire for reform and improvement for everyone must be acknowledged.

Your Commission has been deliberate in our preparations as we embark on a crucial dialogue with the people of Saskatchewan to look together for solutions for the future. We are very encouraged by the assistance of several people, including our stakeholders. Our preliminary review, unfortunately, indicates that while a lot has been done in the name of justice reform, not enough has changed. Our collective task, then, is to bring about meaningful change, one that makes a positive difference.

As your Chairperson, I believe we can learn from the past experiences to build on today, so that we may give a better Saskatchewan to our children and youth of the future. To accomplish that, we must build on our successes as we look ahead. Hopefully, our dialogues will allow everyone who wants to, to contribute to the meaningful reform we all seek. With the collective experience, knowledge and wisdom of our youth and our Elders, we can build a better justice system that is sustainable for Saskatchewan.

I note an early signal that it will require development of positive relationships, working partnerships and shared responsibilities. Ultimately, it will take everyone's commitment and respect to ensure implementation of our recommendations for future justice reform. We look forward to your guidance and prayers; together we will build a better future.

Meyo Wahkotowin

Yours in justice

Wilton Littlechild

An Invitation from the Justice Reform Commission

This *Commission on First Nations and Métis Peoples and Justice Reform* recognizes that the people of Saskatchewan collectively have tremendous wisdom to share regarding the system of justice delivery. We are committed to listening to the people of Saskatchewan individually, as organizations, and as communities.

This Commission invites all interested people to participate in this process. The emphasis of the Justice Reform Commission will be to fully understand the problems with justice delivery and focus on forward-looking solutions and recommendations. In this process, it is essential that we listen to the wisdom of Saskatchewan people. We are committed to listening and understanding.

The Justice Reform Commission has already scheduled a series of dialogues in Saskatchewan communities. These dialogues will be an opportunity for citizens in each of these communities and surrounding areas to provide their experience and knowledge about the justice system in Saskatchewan. If requested, the Commission will consider holding in-camera sessions as part of these dialogues in order to ensure that we receive candid submissions in a suitable environment.

In addition to the community dialogues, the Commission will be receiving submissions from individuals and organizations. Written submissions may be submitted at any time to the Commission office in Saskatoon. It is anticipated that in the Fall of 2002, the Commission will receive oral submissions from organizations and individuals who are committed to justice delivery in Saskatchewan.

The Justice Reform Commission will complete its community dialogues and public hearings by June 2003. The Commission urges all interested persons to participate in this process. This is an opportunity for the people of Saskatchewan to voice their concerns regarding the justice system. The *Commission on First Nations and Métis Peoples and Justice Reform* is committed to providing this opportunity.

Meet the Commissioners

MR. J. WILTON LITTLECHILD

Mr. J. Wilton Littlechild, O.C., Q.C., I.P.C., acquired his Law Degree from the University of Alberta in 1976. Mr. Littlechild was the first Treaty Indian in Alberta to graduate with a law degree and the first Treaty Indian elected to Canadian Parliament. He is an outstanding athlete and continues to be heavily involved as an organizer in sporting events and was inducted into four Sports Halls of Fame. He received the Order of Canada in 1999.

As a Member of Parliament (1988-1993), Mr. Littlechild served on several senior committees in the House of Commons and was a parliamentary delegate to the United Nations. At the international level, he organized a coalition of Indigenous Nations that sought and gained consultative status with the Economic and Social Council of the United Nations, and has now been appointed by the ECOSOC President to the United Nations Permanent Forum for Indigenous Peoples. He has been recognized as Queen's Counsel and Indigenous Peoples Counsel by the legal profession. Mr. Littlechild speaks Cree, English and French.

MR. HUGH HARRADENCE

Mr. Hugh Harradence, Q.C., is a partner with the law firm of Harradence Logue Holash in Prince Albert, and practises as a litigator in both criminal and civil matters. Mr. Harradence was appointed Queen's Counsel for Saskatchewan in 1999 and has recently been active as a Coroner for four inquest investigations regarding the deaths of Aboriginal victims in Saskatoon.

Mr. Harradence is the former president of the Canadian Bar Association, Saskatchewan Branch and has been a significant contributor within the legal community.

MS. GLENDA COONEY

Ms. Glenda Cooney is currently serving as Deputy Children's Advocate in Saskatchewan and is former Deputy Ombudsman for Saskatchewan. Ms Cooney is Past-President of the John Howard Society of Canada and contributor to several United Nations forums on criminal justice. She has worked for the Solicitor General of Canada in policing, corrections and parole, and was a member of the National Parole Board of Canada.

Ms. Cooney has served for years as an advocate for community-based restorative justice and alternative dispute resolution.

Meet the Commissioners (continued)

MR. JOE QUEWEZANCE

Mr. Joe Quewezance served as the elected Tribal Chief of the Saskatoon Tribal Council for six consecutive two-year terms, between October 1988 and October 2000. While serving his terms as Tribal Chief, Mr. Quewezance represented the Saskatoon Tribal Council on the Boards of the Saskatoon Indian Institute of Technology and the Saskatchewan Indian Equity Foundation.

Mr. Quewezance has been very involved in the social and economic development of the Aboriginal community in Saskatoon. As a member of the Yellow Quill First Nation, Mr. Quewezance served as Chief for ten years and as a band councillor for several years.

MS. IRENE FRASER

Ms. Irene Fraser is a grandmother with a Métis background. She is also the Regional Manager of the Aboriginal Unit for the National Parole Board, Prairie Region in Saskatoon. She has been involved in several areas of the justice system for approximately twenty years. In her current work, Ms. Fraser has been heavily involved in the development and coordination of Elder and community-assisted parole hearings, as well as in developing and presenting to Aboriginal communities on legislation, policies and practices of the National Parole Board.

Ms. Fraser has served on numerous boards of organizations locally, provincially and nationally, many of which have been related to Aboriginal issues.

Stakeholders Meeting Established Commission's Mandate

INTRODUCTION

On March 12 and 13, 2002, the *Commission on First Nations and Métis Peoples and Justice Reform* held its first dialogue with a diverse group of stakeholders invited by the Commission. The Commission had two objectives:

- to seek guidance from individuals who had been identified as having a passion about the justice system and who could facilitate and critique the work of the Commission, and
- to generate ideas on where the Commission might focus its work for the next two years.

The stakeholders identified critical areas for reform of the justice system. They identified opportunities and challenges for the Commission. Most importantly, they shared their collective wisdom and knowledge, which guided the Commission in the development of the Dialogue Strategy on which the Commission has embarked.

In general, participants shared a sincere desire to explore and understand other perspectives with respect to justice reform in Saskatchewan. Although all stakeholders came from organizations and communities with specific needs and objectives, there was a definite interest in understanding the perspectives of other stakeholders. A desire to "establish a network for future dialogues," "share what works and best practices," and to "close the communication gap with respect to the justice system," were frequent expressions. The Commission was advised to balance what is not working with respect to the justice system with what is working or could be further improved. The Commission was encouraged to work towards building positive relationships.

AREAS IDENTIFIED FOR REFORM

The Community Connection

- Expand the role of the community in addressing justice matters
- Build safer communities for children
- Heal families
- Provide community support for those in contact with the justice system

Stakeholders Meeting (continued)

Victims and Violence

- Promote zero tolerance for violence in communities
- Be sensitive of the need to validate a person's trauma
- Empower women and men to deal more effectively with violence
- Improve access to support programs

Education and Understanding

- Improve communications and understanding of the justice system

Changing the Culture of Organizations

- Change the culture of organizations in the justice system - unhealthy organizations tend to undermine constructive, healthy behaviour and preclude innovation and cooperation

Reforms and the Wider Context

- Consider the wider social, economic and political context in which recommendations will be implemented
- Take an integrated approach with social issues, community needs and the justice system

Youth Issues

- Stop criminalizing our youth
- Invest in keeping youth out of the system (recreation, address substance abuse and other issues specific to teenagers)

Incarceration

- Utilize as a remedy of last resort, not the first response of the justice system
- Make rehabilitative and productive rather than a convenient warehousing alternative

Root Causes of Crime

- Address the root causes of crime
- View the problems holistically, not sector by sector
- Examine the foundations and history of the existing justice system to reveal hidden assumptions about crime, rehabilitation, justice, healing and safe communities

What's Working and What's Not

- Identify those practices and programs that seem to be working and find ways to improve on that progress
- Build on what is working

Racism

- Address the significant impact racism has on the justice system's relationship with Aboriginal people

Stakeholders Meeting (continued)

Process

The stakeholders made a number of suggestions concerning the processes the Commission should use as it developed its recommendations:

- Provide a safe, yet open forum for people to talk about their experiences
- Keep the general public informed
- Use technology to promote the work of the Commission
- Do not become pre-occupied with formal "consultations" or "hearings", but consider dialogues with communities

Balance in the Dialogues

- Listen to agents of the justice system, victims, offenders, their families and their communities, those who are marginalized by society, those who run the system, service providers, and Aboriginal and non-Aboriginal communities

Balance the Past and Present

- Show compassion and patience when past problems emerge
- Aboriginal and non-Aboriginal people want change, sooner rather than later, but somehow the past will have to be reckoned with and acknowledged

Making the Case for Change

- Recommendations may be implemented in a difficult environment
- Make a strong case for reform
- Maintain programs that are working, change those that are not
- Address the need for short-term and long-term change

A Communications Strategy

- Communicate the Commission's purpose and progress to Aboriginal and non-Aboriginal communities
- Be transparent and open
- Be accountable

Capitalize on Community Strengths

- Get people and organizations to share power and be responsible for the change
- Every community and organization was recognized as possessing strengths and weaknesses
- Communities are the key to positive reform

The Commission as a Bridge

- The Commission is a bridge between First Nations, Métis and non-Aboriginal communities and the justice system
- Dialogue between the participants, the communities and the system is vital to building a foundation for constructive and lasting change

Barriers

- Public cynicism
- Conflict between the Commission's proposed agenda for change and government priorities

A Strategy for Dialogue

INTRODUCTION

The Justice Reform Commission acknowledges that there is an over-representation of First Nations and Métis peoples in the justice system and that many people have lost faith in the present system. We were appointed to address these concerns. The Commission was created in November 2001. The members convened in January, and sit on a part-time basis.

We began by reviewing previous reports from various commissions and boards of inquiry, by meeting with people who have experience with previous commissions and with known experts in various areas of justice. In doing so, it became apparent to the Commission that the people of Saskatchewan have first-hand knowledge and experience with the justice system and were in the best position to assist the Commission with developing strategy. Through the wisdom and guidance of an invited stakeholders group, the following strategy for dialogue was developed.

It is with a sincere interest in exploring and understanding the perspectives and solutions of the people of Saskatchewan that the following Strategy for Dialogue is presented. The goal of the dialogues is to listen to the wisdom of the people of Saskatchewan. We want to know what concerns you have with the justice system. The Justice Reform Commission is asking three very basic but essential questions:

1. What concerns do you have with the justice system?
2. What examples of successes or positive programs have you seen?
3. How do you think the justice system can be improved?

It is the vision of the *Commission on First Nations and Métis Peoples and Justice Reform* to build One Community - working together to create a healthy, just, prosperous and safe Saskatchewan. "*Meyo Wahkotowin*" is the Cree concept.

It is the Commission's mission to create change and make a difference by:

- Listening to people
- Building relationships
- Promoting respect and change
- Recognizing successes, and
- Making recommendations for future justice reform

PURPOSE OF THE DIALOGUES

The purpose of the Dialogues is to generate information and solutions for change that will improve the relationship between First Nations, Métis and non-Aboriginal peoples and the justice system. Specifically, the Commission wants solutions that will:

1. Reduce levels of offending;
2. Reduce levels of victimization;
3. Reduce levels of recidivism;
4. Improve the safety of First Nations, Métis and non-Aboriginal communities in Saskatchewan;
5. Identify short and long-term implementation strategies to achieve the above; and
6. Identify the vehicle to oversee the implementation of the Commission's solutions.

TYPES OF DIALOGUES

The Commission will meet a cross-section of community members in Saskatchewan. Primary input will be sought from First Nation, Métis and non-Aboriginal communities in Saskatchewan and federal, provincial, First Nation and Métis government departments and agencies working in justice-related areas. Other sources for possible input are the academic and professional communities, and individuals and organizations familiar with justice reform initiatives and projects in other jurisdictions. The experiences and insights of youth and women are of key interest to the Commission.

Among the Dialogues anticipated are:

- *Community Dialogues:* the Commission will hear directly from community members on justice reform.
- *Formal Presentations:* the Commission will hear prepared statements from organizations on reforms to the justice system.
- *In-Camera Dialogues:* the Commission will hear presentations from individuals who wish to maintain their confidentiality.

A Strategy for Dialogue (continued)

- *Stakeholders in Justice Reform:* the Commission invites selected community voices to discuss the work of the Commission.
- *Round Table Dialogues:* the Commission will hear expert opinion on particularly difficult but promising areas for reform of the justice system.

FORMAT

The Justice Reform Commission is sensitive to the fact that each community it visits will be unique - with unique histories and relationships to the justice system, with distinctive needs and cultural factors to be considered. The specific format and agenda for each Community Dialogue will depend on the community.

Typical formats could include large community circle dialogues, working group dialogues or town hall meetings. Depending on the circumstances, some Community Dialogues could blend features of these typical formats.

COMMUNITY DIALOGUES VS. OTHER FORUMS

The Commission feels its emphasis on the Community Dialogues gives it a strategic edge in getting to the heart of justice reform. However, it is aware other forums may be required to further develop the solutions it identifies.

Progress Report

The *Commission on First Nations and Métis Peoples and Justice Reform* was introduced to the people of Saskatchewan by Justice Minister Chris Axworthy on November 15, 2001. The announcement was made at Wanuskewin Heritage Park, with First Nations and Métis leaders, Elders, law enforcement personnel, and others interested in the justice system in attendance.

> **"Dialogues must be safe, people need to know who they will meet with, how their information will be recorded and transcribed."**
>
> *- Participant in Stakeholders meeting*

A key gathering was held in Saskatoon on March 12 and 13, 2002 when the Justice Reform Commission met with a group of individuals at the invitation of the Commissioners. The purpose of the meetings was to seek guidance from people who have significant experience with the justice system and a sincere desire to see improvements to the system. The Commissioners came away from these meetings with a clearer understanding of their mandate and how to implement the process of dialogue with the people of Saskatchewan. (A comprehensive report on the Stakeholders meetings is contained elsewhere in this report.)

> **"There must be a culture of change. The Commission is an agent of change, but there needs to be agents of change within the components of the criminal justice system for there to be any effect."**
>
> *- Participant in Stakeholders meeting*

Progress Report (continued)

"Yeah, like I was raised traditionally from a very young age, like I smoked the pipe all the time with my grandfather, he taught me and my brothers about the pipe, raindances, everything. Like, I was raised really traditionally, but once I hit my teenage years and I was able to get out on my own, I started hanging with my friends and smoking pot and stuff."

- Youth at Street Culture Kidz Project

The Commissioners were invited to meet with youth participants in Street Culture Kidz Project, a Regina-based, non-profit organization that operates in the inner city. With a volunteer board of governors and a team of 11 full-time staff and 30 youth who work for Street Culture Kidz Project on a variety of endeavours, this organization has made an important difference in the lives of the young people it serves.

"Never knew ... none of us really knew our parents or our dads or anything like that. You know, like a long line of family violence, family alcoholism or whatever, you know? It's just like all that stuff comes into play in everybody's life and people ... and that's the thing, cops don't understand that, you know?"

- Youth at Street Culture Kidz Project

A meeting with five young men who have had some personal experience with the justice system was arranged by the Justice Reform Commission and Kim Sutherland of Street Culture Kidz Project. The dialogue took place on the evening of Monday, April 15 in the relaxed setting provided by the organization at its centre on Scarth Street. The participants, all young men, spoke freely and openly about their experiences and offered their advice for implementing change to the justice system.

"The charge limit is 12, they're starting to go under that, so those little young kids could do whatever and not even get charged for it. You guys got to like, get to them before the gang does."

- Youth at Street Culture Kidz Project

"I wish you a good journey, your path is leading you in a way that you're going to learn a lot of things from a lot of people and I know that when you have an open heart and you see good things and you hear good things, you will find the solutions."

- Speaker at Regina Friendship Centre Dialogue

The Justice Reform Commission was invited to attend a community dialogue hosted by the Regina Friendship Centre. This community dialogue was held in the gymnasium at St. Andrew's United Church on Tuesday, April 16 and was moderated by Commissioner Glenda Cooney and Conrad Lavalley, Executive Director of the Regina Friendship Centre.

This dialogue was the Commission's first public dialogue. It was attended by more than 150 people and received extensive provincial and national media coverage.

"I think we all have a lot of work to do here. I think the Commission, at this point, is going to go a little further than the one that was conducted in Manitoba a few years back. You know, I think there's a lot of work and I think they're on the right track."

- Elder at Regina Friendship Centre Dialogue

The dialogue was conducted in a circle and opened and closed with prayer from an Elder.

Everyone was encouraged to speak and share their experiences and wisdom. A diverse range of views was shared with the Commission, which heard of some successes, some areas that need further work and some areas where reform is necessary.

"We are of the belief that prevention is better than incarceration. Our institutions, federally, provincially and our youth institutions are full of Aboriginal people. Programs like the Child Youth and Family at Risk program at the Friendship Centre are needed. At the community level we are in dire need of programs that reach the young people, meet them and prevent them from going any further ... teach, through their spirituality and their culture, how to make positive changes."

- Speaker at Regina Friendship Centre Dialogue

Progress Report (continued)

"We still have all these problems. We are still abusing alcohol. We are still abusing drugs. We're abusing each other, you know, spiritually, mentally, emotionally and physically. We're still doing all these things. It just keeps happening and we don't need a residential school to do that because we're doing it to ourselves. And our governments, right from the band level, right through FSIN, they don't realize how important social development is to our people."

- Youth at Saskatchewan Native Theatre Dialogue

On Thursday, April 18, the *Commission on First Nations and Métis Peoples and Justice Reform* attended a performance of *The Alley*, a play written by Métis Elder Maria Campbell and a young writer, Robert Naytowhow of Saskatchewan Native Theatre Company. Performed by cast members of the Saskatchewan Native Theatre Company, the play was a vivid portrayal of social issues affecting young Aboriginal people in this province.

Following the performance, the Commissioners met with members of the theatre company and other community members for a series of circle discussions on issues affecting the justice system.

"The only two solutions are restorative justice and cultural restoration, giving back to Indian people their identity."

- Youth at Saskatchewan Native Theatre Dialogue

"We will be a solution-driven commission, one that will seek answers to the problems facing the system as it operates now."

- Commissioner Joe Quewezance at Northern Justice Symposium

Mr. Joe Quewezance, one of the Commissioners on the *Commission on First Nations and Métis Peoples and Justice Reform* was the guest speaker at the opening of the Northern Justice Symposium on Wednesday, April 24 in Prince Albert. Sponsored by New North - SANC Services Inc., the theme for the conference was: Restoring Balance in Our Community - Crime Prevention Initiatives.

> **"We want to hear the voices of youth, of Elders and of people like yourselves who are determined to bring about a better way of life for your children and grandchildren."**
>
> *- Commissioner Joe Quewezance at Northern Justice Symposium*

Mr. Merv Aubichon, Executive Director for the Commission on First Nations and Métis Peoples and Justice Reform and Mr. Winston McLean, Director of Operations, have finalized plans for a series of Dialogues in the northern regions of the province. These dialogues will take place at the invitation of people in these communities. A schedule is contained in this report.

Future Dialogues with Saskatchewan People

NORTHERN DIALOGUES ON JUSTICE REFORM

- Tuesday, June 4 and Wednesday, June 5

  Dialogue with Meadow Lake

- Wednesday, June 5 and Thursday, June 6

  Dialogue with Beauval

- Thursday, June 6 and Friday, June 7

  Dialogue with La Loche

- Monday, June 10 and Tuesday, June 11

  Dialogue with Sandy Bay

- Tuesday June 11 and Wednesday, June 12

  Dialogue with Pelican Narrows

- Wednesday, June 12 and Thursday, June 13

  Dialogue with Black Lake

Aboriginal Justice Inquiries: An Overview of Findings

INTRODUCTION

During the past two decades, a number of major public inquiries and reviews have been commissioned by Canadian governments and other bodies to examine Aboriginal justice issues. While it is beyond the scope of this brief to review all of these reports in detail, some of the most significant studies completed will be discussed.

The findings and conclusions of these public inquiries and major reviews are important for a number of reasons:

- These inquiries and reviews usually involved a comprehensive synthesis and analysis of large bodies of relevant research;
- Additional research to fill gaps in information and understanding was often undertaken as part of the inquiry process;
- The inquiries and reviews went beyond the strict confines of scientific research to gather a much broader base of evidence. This allowed for more authoritative findings and conclusions to be reached than would have been possible with statistical studies alone. In particular, such inquiries and reviews heard personal testimony, held public hearings, and sought out the advice of experts in the field; and
- Such studies and reviews were headed by Canadians and Canadian institutions with outstanding records for objectivity, leadership and judgment.

For these reasons, the findings and conclusions reached by these public commissions and inquiries are worthy of careful attention.

A SUMMARY OF FINDINGS

The following is an overview of some of the findings and conclusions of some of the key public inquiries and reviews conducted over the past decade.

1. The Royal Commission on Aboriginal Peoples (RCAP)

Appointed by Prime Minister Brian Mulroney in 1991, *The Royal Commission on Aboriginal Peoples (RCAP)* was comprised of seven Aboriginal and non-Aboriginal leaders, including two co-chairs: George Erasmus, former National Chief of the Assembly of First Nations, and the Honourable Rene Dussault, a former senior civil servant and now a superior court judge in Quebec. The Commission was asked to investigate all aspects of the relationship between Aboriginal peoples and Canadian society.

Justice issues were a key concern for the RCAP. Extensive research was commissioned, a synthesis of previous studies and inquiries was prepared, and a "round table" forum was convened (Royal Commission 1993). The Commission also issued a special report - *Bridging The Cultural Divide: A Report on Aboriginal People and Criminal Justice In Canada* (Royal Commission 1995).

The round table brought together by the *RCAP* in 1992 included a number of prominent judges, police officers, government ministers and senior bureaucrats, as well as representatives from many Aboriginal organizations. The first conclusion reached by the round table was that the justice system had failed Aboriginal people (1993). The special report issued by the *RCAP* (1995) reconfirmed this conclusion, but it went further. In particular, the Commission observed and stated in its report:

- The Canadian criminal justice system had failed the Aboriginal peoples of Canada - Indian, Inuit and Métis people, on-reserve and off-reserve, urban and rural - in all territorial and government jurisdictions;
- The principle reason for this crushing failure was the fundamentally different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice;
- Aboriginal people are over-represented in the criminal justice system, most dramatically and significantly in provincial and territorial prisons and federal penitentiaries;

- Over-representation of Aboriginal people in the criminal justice system is a product of both high levels of crime among Aboriginal people and systemic discrimination; and

- High levels of Aboriginal crime, like other symptoms of social disorder such as suicide and substance abuse, are linked to the historical and contemporary experience of colonialism, which has systematically undermined the social, cultural and economic foundations of Aboriginal peoples, including their distinctive forms of justice.

In response to the concerns, five volumes and a number of reports and studies, along with almost 500 recommendations, were produced.

Looking Back, Looking Forward, Volume I, 1996, RCAP noted a need for:

- Establishment of a renewed relationship between Aboriginal and non-Aboriginal people in Canada on the basis of justice and fairness.

- Recognition of the appropriate place of Aboriginal peoples in Canadian history.

- Response to past injustices such as residential schools, relocation and discrimination against Aboriginal veterans.

In Reconstructing the Relationship, Volume II, the Commission felt:

- The treaties must be honoured.

- The current land base must be expanded significantly.

- Self-determination and self-government must be negotiated.

- Legislation must be enacted to enable each of these goals.

Aboriginal Justice Inquiries (continued)

In Gathering Strength, Volume III, the Commissioners emphasized that change would take time and therefore, there was an immediate need for movement on social concerns. The movement required:

- An integrated approach on everything from housing and education to language and health issues and more.

Perspectives and Realities, Volume IV, the RCAP Commissioners also proposed a number of recommendations aimed at:

- "Resolution of jurisdictional confusion and fostering a sound, coordinated approach to urban Aboriginal policy." (p. 612) These included consideration of specific groups such as women, Elders and youth.

A statement reiterated by the Commissioners on several occasions was, "There can be no peace or harmony unless there is justice."

2. The Aboriginal Justice Inquiry of Manitoba (AJI)

The Aboriginal Justice Inquiry was established by the Government of Manitoba in April 1988 in response to two incidents. The first was the 1987 trial of two men for the murder of Helen Betty Osborne, a trial that came a full 16 years after the murder. The second incident involved the death of John Joseph Harper in March 1988. Harper, the executive director of the Island Lake Tribal Council, died following an encounter with a City of Winnipeg police officer. The next day the police department exonerated the officer despite many unanswered questions.

The *Inquiry* (Hamilton and Sinclair 1991; pp 1, 86-7, 249) reported:

> The justice system has failed Manitoba's Aboriginal people on a massive scale. It has been insensitive and inaccessible, and has arrested and imprisoned Aboriginal people in grossly disproportionate numbers. Aboriginal people who are arrested are more likely to be denied bail, spend more time in pretrial detention and spend less time with their lawyers, and, if convicted, are more likely to be incarcerated . . . For more than a century the rights of Aboriginal people have been ignored or eroded . . . Aboriginal peoples have experienced the most entrenched racial discrimination of any group in Canada. Discrimination against Aboriginal people has been a central policy of Canadian governments since Confederation . . . The discrimination against Aboriginal people by our governments and permitted by the general Canadian population represents a monumental symbol of intolerance . . . In short, the current court system is inefficient, insensitive and, when compared to the service provided to non-Aboriginal people, decidedly unequal.

In its report the AJI made 293 recommendations on almost every aspect of the relationship between Aboriginal people and the justice system. It advocated recognition of the reality of aboriginal self-government by the federal and provincial governments. It suggested the creation of a separate Aboriginal justice system with its own criminal and civil laws and a separate system of courts, organized regionally on the model of the tribal courts of the American northwest. It recommended the establishment of Aboriginal police forces for Aboriginal communities and greater numbers of Aboriginal police officers on existing forces. The Inquiry made a series of recommendations dealing with sentencing and appropriate incarceration facilities for Aboriginal people. (Hamilton and Sinclair, 1991: ch. 17)

However, the Inquiry also emphasized Aboriginal people's skepticism with respect to the likelihood of recommendations being implemented. Chief Oscar Lathlin, as he then was, was reported as stating, "This is the biggest fear that we have of this Inquiry, that nothing will be done once the Inquiry is over." (1991, p. 640)

In 1999, in an effort to respond to the perception that nothing had in fact happened, the Manitoba Government established the *Aboriginal Justice Implementation Commission* (2001) to put the recommendations into action. The priorities for action identified by the Commission included: fulfilling Aboriginal rights and improving Aboriginal relations; emphasizing community and restorative justice; and ensuring crime prevention through community development. A further recommendation was for the establishment of a permanent Aboriginal Justice Commission to work on these issues on an ongoing basis.

3. Justice on Trial: The Alberta Task Force Report

The Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta (Alberta Task Force 1991) was not established in response to a specific case. Rather, it was formed to address more general concerns about the impact of the criminal justice system on Aboriginal peoples. These concerns included the disproportionate number of Aboriginal people in correctional institutions and the delivery of criminal justice services to Aboriginal people by non-Aboriginals. The purpose of the Task Force, according to its own terms of reference, was:

> To complete a review of the criminal justice system in Alberta as it relates to Indian and Métis people and to provide a report for the Solicitor General of Canada, the Attorney General of Alberta and the Solicitor General of Alberta, which identifies any problems and proposes solutions to ensure the Indian and Métis people receive fair, just and equitable treatment at all stages of the criminal justice process in Alberta. (pg. 1-1)

The Task Force made a total of 340 recommendations in the areas of policing, legal aid, the courts, judges, prosecutors and lawyers, and corrections. Among the recurring themes in all these areas were:

- the need for increased communication and liaison among and between Aboriginal communities and organizations, police agencies and government departments;
- the need for increased and enhanced cross-cultural training for staff within the criminal justice system;
- the need to increase the number of Aboriginal people employed within the criminal justice system;

- the need to develop custodial alternatives and options for remanded Aboriginal accused and sentenced Aboriginal offenders;
- the need to increase elder involvement in the criminal justice system;
- the need to expand the availability of alcohol and drug treatment programs;
- the need to expand Aboriginal community-based resources;
- the need to increase Aboriginal involvement in criminal justice system planning, program development and service delivery; and
- the need to increase public education regarding Aboriginal issues, as well as Aboriginal awareness of the workings of the criminal justice system.

4. The Saskatchewan Indian Justice Review Committee and the Métis Justice Review Committee

Sask Justice, the Government of Canada, and the Federation of Saskatchewan Indian Nations agreed to establish Saskatchewan Indian and Métis Justice Review Committees in 1991 (Linn 1992a;1992b). The objective was not to address past wrongs, but rather to examine ways to make changes within the present criminal justice system, while encouraging expansion of positive changes already under way.

The Committees recognized both the increasing number of similar studies and the lack of any significant progress in implementing their recommendations. For these reasons, they adopted a short time-frame in which to identify practical solutions and initiatives that could be implemented immediately or within a reasonable period.

The recommendations made in the two reports were identical, except for three recommendations specifically concerning Indian people. Recommendations were directed primarily to making the criminal justice system more responsive to Indian and Métis people. They included matters such as access to programs, employment equity, and participation in decision making.

A more comprehensive examination of this Commission can be found elsewhere in this report.

5. The Law Commission of Canada

The Law Commission's study was initiated in June 1990. The Minister of Justice asked the Commission to study the *Criminal Code* and related statutes, and to examine the extent to which those laws ensure that Aboriginal persons and persons who are members of cultural or religious minorities have equal access to justice and are treated equitably and with respect.

The Commission divided its work into an Aboriginal justice review component and a component that reviewed other cultural and religious issues. One of the goals of the study was to propose reforms that would secure formal equality in access to justice. At the same time, however, the Commission attempted to identify when equal treatment before the law necessitated recognition and incorporation of cultural distinctiveness within the criminal justice system.

The Commission (1991; p. 16,75) found:

> The present system fails the Aboriginal peoples ... Canada's current sentencing laws are archaic and inadequate ... in our view, the current regime fails to respect the Charter's guarantees of equality and fundamental justice in a number of important respects.

6. Ontario Commission On Systemic Racism in the Criminal Justice System

While the inquiries and commissions considered thus far have been concerned with Aboriginal justice issues, the *Commission on Systemic Racism in the Ontario Criminal Justice System* had a broader focus. It was established in October 1992 to: "inquire into and make recommendations about the extent to which criminal justice system policies, practices and procedures reflect systemic racism." (Commission 1995a; p. 7) Although all racial minorities were considered, the main emphasis of the Commission's work was on the treatment of Blacks.

The Commission determined that systemic racism or "racialization" was widespread within the Ontario criminal justice system. For the Commission (1995b; p. 40), racialization was described as a process "by which societies construct races as real, different and unequal in ways that matter to economic, political, and social life."

The Ontario Commission found that racialization produced different outcomes at every stage of the criminal justice process. Numerous instances of overt and systemic discrimination involving the police, the Crown, the courts, and the correctional system were documented. The Commission also determined that the differential treatment afforded to racialized groups could not be justified on the basis of so-called "legal" variables, but instead, was influenced by "extra-legal" considerations relating to race.

The Ontario Commission (1995b; pp. x, xi) recommended an "equality strategy" to bring about racial equality within the justice system:

> This framework has four key elements: anti-racism training of justice system personnel; employment of racialized persons in the administration of justice; participation of racialized persons in the development of justice policies; and monitoring of practices for evidence of racial inequality . . . The elimination of systemic racism . . . will require integrating the principles of inclusion, responsiveness, and accountability into all aspects of the criminal justice system, together with an overriding commitment to restraint when invoking judicial sanctions.

Specific recommendations pertaining to the corrections system included: the appointment of an Anti-Racism Coordinator with a broad mandate to bring about change (research, audits, development and implementation of anti-racism strategies, etc.), the abolition of racial segregation of prisoners, the standardization of staff training, the development and implementation of non-discriminatory pre-trial and post-sentence policies, and the provision of culturally appropriate services.

7. Other Reports

Numerous other reports and inquiries have reached conclusions similar to those detailed above. For example:

- A review by the Canadian Bar Association (1988; pp. 76-77) comments that: "The reality under current justice regimes is one of gross inequality of treatment for Native people."

Aboriginal Justice Inquiries (continued)

- The principal purpose of the *Royal Commission on the Donald Marshall, Jr., Prosecution* (1989) was to determine why Donald Marshall was wrongfully convicted and to make recommendations which would ensure that such a miscarriage of justice did not happen again. Among the more general findings in the 1989 report was that the criminal justice system failed Donald Marshall at every point from his arrest and conviction up to and beyond his acquittal by the Supreme Court of Nova Scotia.

- *The Osnaburgh-Windigo Tribal Council Review Committee* (1990; p. 103), pointed out that "It is recognized that some Euro-Canadian police officers possess racist attitudes towards Native persons . . . These racist attitudes stem from a lack of understanding and knowledge of cultural differences between natives and non-Native people."

- *Aboriginal Peoples and Criminal Justice* (1991), a report by the Canadian Bar Association, recommended increasing the number of Aboriginal workers in the courts, overcoming the language and cultural barriers and increasing community involvement in the justice system. It went further to suggest that those Aboriginal communities with the ability to run viable alternative justice systems should be allowed to undertake such initiatives.

- *Saskatchewan Aboriginal Justice Strategy - The Origins, Rationale and Implementation Process: An Evaluation Report*. 2000. This report is a review of the Saskatchewan Aboriginal Justice Strategy (SAJS) which has been in place since 1993, with roots back to the 1980s. Justice was one of five areas to be targeted under this policy framework. Saskatchewan's concern with Aboriginal justice issues resulted from the identification a large over-representation of Aboriginal people in its justice system relative to their population, a young and growing Aboriginal population and a massive problem of crime in Aboriginal communities all of which are contributing to rising economic and human costs.

The SAJS has four main areas of activity: crime prevention and reduction, building bridges to Aboriginal communities through community-based justice development, employment equity and race relations, and self-determination/self-government issues. The Strategy was to be a five-year action plan, but a 1998 Interim Report suggested the program be extended into a long-term plan. The goals of the government strategy are as follows:

- Recognize and respond to the unique needs of Aboriginal accused, victims and communities;
- Involve Aboriginal people in the continuing development of the justice system;
- Reduce the rate of Aboriginal involvement in crime, as victims or offenders, by working co-operatively to address the root causes of crime;
- Develop justice services that are responsible to and representative of the Saskatchewan population; and
- Reflect the culture and values of Aboriginal people in justice policy and services.

The report explains the SAJS and its evolution. Evaluation is a central part of the strategy. The main conclusion is that the SAJS has the lead role in Aboriginal justice reforms and that the strategy has been fairly well implemented.

The Saskatchewan Indian Justice Review Committee and the Métis Justice Review Committee (The Linn Reports)

INTRODUCTION

Since the 1980s, there has been a growing concern about the number of Aboriginal people in conflict with law. There was a need to create awareness of the issues among the policy-makers and various levels of governments. The *Linn Reports* were struck to facilitate consultation on the criminal justice system as it related to Saskatchewan Indian and Métis people and communities. The *Linn Reports* tabled recommendations to the federal and provincial governments and to the Federation of Saskatchewan Indian Nations and Métis Society of Saskatchewan (forerunner of the Métis Nation of Saskatchewan).

The *Linn Reports* were intended to provide a beginning to focus discussions on changes to ensure the respect and confidence of the Aboriginal people in Saskatchewan in the justice system. (1991, p.3) Both reports emphasize that 'meaningful change' can only come about when community is actively involved in deciding what changes need to be implemented and it shares in the responsibility for making such change; and further, that what works in one community may not work in another as each community is unique, with its own set of special circumstances.

The *Linn Reports* unequivocally identify the disproportionate representation of Aboriginal people in custody and the need for this reality to be addressed. They further note that incarceration is at the end of the criminal justice process and that incarceration is but a symptom of other causes. It was their opinion that an analysis of the outcome did little to illuminate or address the root causes of crime. (p.11)

The committees were not mandated to address root causes of crime, but rather to make recommendations "relating to the development of practical, community-based justice services within the context of the existing system of criminal justice." (p.87) Therefore, they focused their recommendations on youth justice, policing, legal representation, court services and corrections. The recommendations promoted changes to the criminal justice system of the 1990s. In total, 93 recommendations for reform were made. In addition, a number of over-arching concerns with direct impact on Aboriginal people and the criminal justice system

were identified: racism, family violence and the need for cross-cultural training. It was their position that unless these concerns were addressed and reforms introduced to improve the social and economic circumstances of Aboriginal people of Saskatchewan, little would be accomplished by implementing their proposed recommendations. (p.64)

Ten years later, 32 of the recommendations have been fully implemented. Fifty-seven recommendations are under development or are of an ongoing nature. Four were not accepted by the federal or the provincial government. These four contain cross-jurisdictional or logistical challenges.

The concerns and issues identified in the *Linn Reports* will contribute to the foundation upon which our dialogues with the people and communities of Saskatchewan will be based.

CHANGE SINCE THE LINN REPORTS

The Saskatchewan justice system has undergone change. Aboriginal communities and organizations have a greater involvement in the design and delivery of justice services, and the system now recognizes and is attempting to respond to, the unique needs of Aboriginal people. The range of interventions has expanded both in terms of services within the system and in the communities of Saskatchewan. There is community-based justice programming for youths and adults including alternative measures, crime prevention, and family violence and victim services.

One notable program is the Regina Alternative Measures Program (RAMP). RAMP provides diversion and mediation as an alternative to the formal court process for adult and youth cases in Regina. The program is dedicated to providing culturally sensitive services. It is hailed by members of the Regina community as one other communities should consider. As an Elder at the Regina dialogue, April 16, 2002 stated, "that's one program that I have big praise for."

There has been an increase in the number of Aboriginal police officers, police management boards on reserve, as well as community policing in urban areas. Eight Aboriginal Resource Officers throughout the province now work with local police services to provide support and referral services to Aboriginal people who have been impacted by crime or trauma.

The Linn Reports (continued)

The Aboriginal Courtworker Program was reinstated and a Northern Cree Court has been established. Police Commissions in Regina, Saskatoon and Prince Albert, as well as the Saskatchewan Police Commission, have five persons of Aboriginal ancestry, in total, one of whom holds the position of Chair. There are also three judges of Aboriginal ancestry in the province. As well, conditional sentencing was introduced.

As of 2002, Provincial Court is held on-reserve at the following nine locations:

Beardy's and Okemasis
Big River (White Fish)
Black Lake
Carry the Kettle
Deschambault
Fond du Lac
Montreal Lake
Poundmaker
Southend

In some instances, this change was due to a change in land status due to Treaty Land Entitlement-related reserve creation, rather than a change in venue or court location.

Court is also held near reserve communities at a number of other locations. Examples are many, and include:

Buffalo Narrows (Buffalo River Dené Nation reserve lands)
Cumberland House (near Cumberland House Cree Nation reserve lands)
La Loche (near Clearwater River Dené Nation lands)
Pelican Narrows (beside Peter Ballantyne Cree Nation lands)
Sandy Bay (on land adjacent to Peter Ballantyne Cree Nation lands)
Stanley Mission (on land adjacent to Lac La Ronge First Nation lands)
Wollaston Lake (near Hatchet Lake First Nation reserve lands)

Further, there are a number of southern and central First Nations that are in close proximity to court.

Community-based and institutional correctional programming including healing lodges for youth, men and women, and Elder and community-assisted parole hearings have all contributed to justice services being more responsive to and representative of the Aboriginal population of Saskatchewan. A concerted effort has been made to provide cross-cultural training to those who deliver a justice service. This list is a reflection of the changes and is not intended to be exhaustive.

The actual rate of offending and victimization of Aboriginal people remains unacceptable. This acknowledgement, by all levels of government and within our communities, coupled with a sincere interest in making changes to improve the delivery of justice provides the citizens of Saskatchewan with guarded optimism that solutions can be found and that when implemented the result will be a safer Saskatchewan for all.

Identifying and Building on Positive Change

The *Commission on First Nations and Métis Peoples and Justice Reform* began its work with the knowledge that despite the best efforts of Commissions that have preceded it, little has changed in terms of restoring the confidence of Aboriginal people in relation to the justice system in this country. And for good reason. Aboriginal people continue to be disproportionately represented in Canadian prisons and in provincially operated correctional centres for men and women and children. Perhaps most disturbing for the citizens of Saskatchewan is the knowledge that this province has the highest rate of youth incarcerated among the provinces. Although they comprise only 15 per cent of the population in Saskatchewan, Aboriginal youth represent 69 per cent of young offenders in custody (1999-2000 statistics).

The social impact on First Nations and Métis people who have come into contact with the justice system is significant. Whether it is a symptom of greater social ills or a contributing factor that undermines family values and overall wellness, the justice system plays a defining role in Aboriginal communities.

In his 1994 report submitted to *The Royal Commission on Aboriginal Peoples*, Robert Mitchell, then Saskatchewan Minister of Justice and Attorney General for Saskatchewan wrote:

> One of the complexities of dealing with justice reform for Aboriginal people is that high levels of Aboriginal conflict with the law are in many respects a reflection of wider structural inequities - social, economic and political. The latter beg for solutions which lie beyond the boundaries and mandate of the criminal justice system. To foist responsibility for the resolution of such problems upon the criminal justice system is to assure their continuance. Poverty, unemployment, poor health, family dysfunction, low levels of formal education, substance abuse - these are matters which warrant the attentions of government and civil society at all levels.

Parliament and the Courts

A great deal has been said regarding reforms to the justice system to ensure that it is more equitable to First Nations and Métis people. The *Commission on First Nations and Métis People and Justice Reform* acknowledges that there is scepticism as to whether anything has changed or will change. The Commissioners are dedicated to approaching this task objectively and the Commissioners are motivated to see real positive change. The Commissioners believe that all of the people of Saskatchewan share this motivation to see positive change. A significant step has already been accomplished. Judges, lawyers and elected officials all acknowledge that there is a significant need for reform to the way justice is delivered.

On September 1, 1996 the Parliament of Canada enacted wide-sweeping sentencing reforms. This Commission takes particular notice of Section 718.2(e), which indicates that Judges must specifically take into consideration the circumstances of Aboriginal offenders:

> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

The Supreme Court's first opportunity to thoroughly canvass Section 718.2(e) was in *R.* v. *Gladue*, [1999] 1 S.C.R. 688. Mr. Justice Cory (as he then was) carefully reviewed the circumstances of Aboriginal people and wrote in *Gladue* in part as follows, at para. 67-68:

> The background factors which figure prominently in the causation of crime by aboriginal offenders are by now well known. Years of dislocation and economic development have translated, for many aboriginal peoples, into low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation. These and other factors contribute to a higher incidence of crime and incarceration. A disturbing account of these factors is set out by Professor Tim Quigley, "Some Issues in Sentencing of Aboriginal Offenders", in *Continuing Poundmaker and Riel's Quest* (1994), at pp. 269-300. Quigley ably describes the process whereby these various factors produce an overincarceration of aboriginal offenders, noting (at pp. 275-76) that "[t]he unemployed, transients, the poorly educated are all better candidates for imprisonment. When the social, political and economic aspects of our society place Aboriginal people disproportionately within the ranks of the latter, our society literally sentences more of them to jail."

Parliament and the Courts (continued)

> It is true that systemic and background factors explain in part the incidence of crime and recidivism for non-aboriginal offenders as well. However, it must be recognized that the circumstances of aboriginal offenders differ from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions. Moreover, as has been emphasized repeatedly in studies and commission reports, aboriginal offenders are, as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be "rehabilitated" thereby, because the internment milieu is often culturally inappropriate and regrettably, discrimination towards them is so often rampant in penal institutions.

Saskatchewan Courts have repeatedly endorsed and applied *Gladue*. The Saskatchewan Court of Appeal gave the following guidance to all Courts in Saskatchewan in *R.* v. *Laliberte* (2000), 189 Sask. R. 190:

> In the case of aboriginal offenders, those factors will include the "unique background and systemic factors" which played a part in the offender's criminal behavior. If those factors played a significant role in the commission of the offence, the sentencing judge must consider them in determining whether a sentence of imprisonment would actually deter or denounce the crime in a meaningful way.

In *R.* v. *Fleury* (1998), 169 Sask. R.161 , Mr. Justice Barclay of the Saskatchewan Court of Queen's Bench reviewed numerous reports and studies from across Canada. In his 1998 Decision, Mr. Justice Barclay concluded:

> "This evidence of widespread racism has traveled into systemic discrimination of aboriginals in the criminal justice system."

Of particular importance to achieving real change is the need to prevent young Aboriginal people from becoming involved in the criminal justice system. The *Youth Criminal Justice Act* proposes a similar provision to Section 718.2(e). This Act was given Royal Assent on February 14, 2002 and is scheduled to come into force in April, 2003. A declaration of principle in the *Youth Criminal Justice Act* indicates that young persons who commit offences be treated in a manner that respects gender, ethnic, cultural and linguistic differences in response to the needs of Aboriginal young persons and of young persons with special requirements (Section 3(1)(c)(iv)). The inclusion of this language in the Act presents another exciting opportunity to change the system.

There is a clear recognition by the existing justice system that change is needed. This recognition and acknowledgment is an important first step. It creates an atmosphere and environment in which the Commission and the people of Saskatchewan working together can have optimism that real change can be achieved. The challenge for all of the people of Saskatchewan is put succinctly by Mr. Justice Vancise of the Saskatchewan Court of Appeal in the following conclusion to his November 1996 article, To Change or Not to Change: That is the Issue (1996) Canadian Criminal Law Review, Volume 1, No. 3, p 263:

> "Remember, these legislative changes are just opportunities. If the Judiciary does not react, if Justice and Corrections do not put the necessary programming in place, nothing will happen. The challenge that faces us is to make sure that something happens - that the system changes."

Appendix

TERMS OF REFERENCE

WHEREAS, it is desirable and in the public interest the Commission on First Nations and Métis Peoples and Justice Reform review the justice system with the intent of devising solutions to overcome systemic discriminatory practices and address attitudes based on racial or cultural prejudice;

AND WHEREAS, it is acknowledged this Commission shall not, in any way, be interpreted as an abrogation of Treaty or Aboriginal Rights;

AND WHEREAS, there shall be no negative financial effect arising from the creation of this Commission to any existing First Nations and Métis justice programs and initiatives funded by the Government of Saskatchewan;

THEREFORE, the *Commission on First Nations and Métis Peoples and Justice Reform* is hereby charged to perform its duties and functions in accordance with the following Terms of Reference:

1. The *Commission on First Nations and Métis Peoples and Justice Reform* is mandated to hold hearings regarding reforms to the justice system that will:

   a) respond to justice-related issues of First Nations and Métis Peoples;

   b) include in its scope of consideration all components of the criminal justice system including, but not limited to: policing, courts, prosecutions, alternative measures, access to legal counsel, corrections including community corrections, youth justice, community justice processes, and victims services; and

   c) make reports to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation of Saskatchewan.

2. In the exercise of its mandate, the *Commission on First Nations and Métis Peoples and Justice Reform* shall:

   a) communicate with Saskatchewan's people, and particularly with First Nations and Métis Peoples, communities, organizations and governments, as well as officials who are responsible for the management and operation of the justice system, for the purpose of generating reform proposals and setting priorities for action;

   b) attend First Nations and Métis Peoples' communities to hear about the types of reforms that may be most useful in these communities;

c) hold hearings at times and places that it considers desirable and necessary;

d) analyze proposals in light of recommendations contained in previous justice reform initiatives such as the Saskatchewan Indian and Métis Review Committees, the FSIN Strategic Plan for First Nations Corrections, the Royal Commission on Aboriginal People and the Aboriginal Justice Inquiry of Manitoba, as well as researching existing literature regarding crime, victimization and other relevant factors;

e) identify efficient, effective and financially responsible reforms which would improve the administration of justice and would better reflect the values and inherent strengths of Aboriginal communities and promote positive inter-community and inter-disciplinary co-operation, leading to reduced offending, reduced victimization, reduced incarceration and safer communities for First Nations and Métis Peoples;

f) determine and provide solutions and recommendations for reforming the justice system, thereby ensuring the fair and equitable administration of justice for all people in Saskatchewan;

g) examine cultural issues within the administration of justice including the accommodation of Aboriginal languages, spirituality, family values, women's issues, social structures and respect and protection of traditional livelihood and ways of life; and

h) take into consideration the special fiduciary relationship, exemplified by the *Royal Proclamation of 1763*, Section 91(24) of the *Constitution Act, 1867*, and Section 35(1) and Section 25 of the *Constitution Act, 1982*; as well as the constitutional relationship between Canada and the First Nations and Métis peoples with respect to Aboriginal and Treaty rights in the context of the administration of justice.

3. The *Commission on First Nations and Métis Peoples and Justice Reform* shall provide interim progress summaries every six months from the date of their appointment to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation - Saskatchewan.

4. The *Commission on First Nations and Métis Peoples and Justice Reform* shall provide their final report to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation - Saskatchewan within three years from the date of this order.

5. The Commission will recommend short and long-term implementation strategies and identify a vehicle to oversee the implementation of its recommendations.

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